IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1634 OF 2005

Dr.Kanagasabapathy Sundaram Pillai : Petitioner

V/s.

Municipal Corporation of Greater Mumbai

& Ors. : Respondents

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Mr.V.M.Thorat for the petitioner.

Ms Preeti Purandare for respondent Nos.1 to 3.

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CORAM : H.L.GOKHALE & S.R.DONGAONKAR,JJ.

DATE : MARCH 14, 2006.

P.C.:

1. Heard Mr.Thorat in support of this petition. Ms Purandare appears for respondent Nos.1 to 3.

2. The petitioner herein is working as an Asstt. Health Officer in respondent No.1 Municipal Corporation. It is his case that he has been wrongfully denied promotion to the post of Deputy Health Officer and respondent Nos.5 to 9 have come to be promoted as Deputy Health Officers. At the time when the petitioner’s case came up for consideration for this promotion, as per the rules, the record of previous five years was looked into. The relevant years were 1999-2000, 2000-2001, 2001-2002, 2002-2003 and 2003-2004.

The candidates had to have minimum three grades in category ‘A’ and two grades in category ‘B’. The petitioner did not attain such rating. The analysis of the petitioner for five years was ‘B’, ‘B+’, ‘A’, ‘B’ and ‘B’. The petitioner’s submission is that as far as the first two years are concerned, i.e. 1999-2000 and 2000-2001, the Reporting Officer had analysed his record as ‘A’, but the Reviewing Officer reduced it as ‘B’ and ‘B+’. Ms Purandare has shown the relevant files and from that, it is seen that the Reporting Officer had analysed the petitioner for the year 2000-2001 as ‘B+’. Thus, as far as the year 2000-2001 is concerned, there is no substance in the allegation of the petitioner. As far as the year 1999-2000 is concerned, the Reporting Officer has analysed the petitioner as ‘B’ (on the basis of previous year’s record) and not ‘A’ and, hence, there is no substance in the allegation of the petitioner. Ms Purandare informs that the previous year was required to be looked into since the petitioner had not filed his assessment for the year 1999-2000, and hence the record of the previous year was looked into as per the rules.

3. The other allegation of the petitioner is regarding last two years, viz., 2002-2003 and 2003-2004. It is submitted that the Reviewing Officer was not the one under whom the petitioner was working at the relevant time. The submission is that during those years, the petitioner was on deputation to a Medical College and the Reviewing Officer ought to have

been the Dean of the Medical College.

4. Reliance is placed on clause 1.17 of the Chapter regarding writing of confidential report from the Booklet of the Municipal Corporation issued by its General Administration Department. From the said clause, it is clear that the report by the Reporting Officer is to be made to the next senior Officer for the purpose of review. The submission of Mr.Thorat is that for the last two years, the review has been done not by the Dean, who was the next superior officer, but by the Executive Health Officer. Ms Purandare appearing for respondents Nos.1 to 3 points out that it cannot be so. The Head of the Department has written the report on review and there is nothing wrong. The rule does not provide that the review is to be done by the next superior officer only. It is, however, material to note that for the last two years, the Reporting Officer has analysed the record of the petitioner as 'B' and the Reviewing Officer has retained it as it is. The submission of Mr.Thorat is that if the Dean of the Medical College was to review it, he would have reviewed it as 'A'. It is difficult to accept any such submission which is clearly based on conjectures.

5. In any case, at this stage, on the instructions of the petitioner, who is present in Court, Mr.Thorat seeks permission to withdraw this petition with a view to enable

the petitioner to make a representation for reviewing the service record for the last two years i.e. 2002-2003 and 2003-2004. In view of this request, we allow the petition to be withdrawn with liberty to make a representation to the appropriate authority.

6. We may, however, note that as far as promotions are concerned, the Committee which went into that aspect consisted of five senior Officers of the B.M.C., viz., the Addl. Municipal Commissioner (Eastern Suburbs), who was the Chairman, and other four members, who were the Joint Municipal Commissioner (M.E.& H.), Executive Health Officer, Incharge Chief Personnel Officer and Joint Chief Personnel Officer. There is no allegation whatsoever against the members of the Committee by the petitioner. The Committee has considered the case of the petitioner on 9.2.2005 but found him ineligible. Respondent Nos.5 to 9 have been found eligible and are already promoted. In view of the withdrawal of the petition, their promotions remain unaffected.

7. The petition is allowed to be withdrawn with liberty to make a representation. The representation of the petitioner will be decided expeditiously.

H.L. GOKHALE, J.

S.R.DONGAONKAR, J.